

## **INITIAL STATEMENT OF REASONS:**

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to amend Section 8006 of Article 3, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA's Inmate Employability Program, Inmate Work/Training and Education. Specifically, CALPIA and PIB propose amending Section 8006 to address issues related to the advancement of inmate workers from one skill level to the next progressive skill level and from one pay level to the next progressive skill level.

## **PURPOSE OF PROPOSED REGULATORY ACTION:**

This regulatory action is necessary to implement, interpret, clarify and make specific Penal Code (PC) Section 2801 regarding inmate participation for work assignments with CALPIA.

Penal Code (PC) Sections 2801 and 2808 provide the PIB with implied rulemaking authority to establish regulations for developing and operating enterprises to employ prisoners. Penal Code Section 2801(c) provides CALPIA's General Manager with the authority to operate a work program for prisoners.

Pursuant to Government Code section 11342.2, this proposed amendment is consistent with, and not in conflict with, PC sections 2801 and 2808; the proposed regulatory action is reasonably necessary to effectuate the purpose of PC section 2801(c) and amend the regulation to address issues related to the advancement of inmate workers from one skill level to the next progressive skill level and from one pay level to the next progressive skill level.

## **PROBLEM ADDRESSED BY REGULATION AND SPECIFIC BENEFITS ANTICIPATED**

### **Problem Statement:**

While the regulations were promulgated with the intention that advancing inmate workers from one skill level to the next progressive skill level and from one pay level to the next progressive skill level, the language providing for an advancement upon only a 30-day period has been interpreted in a manner that would circumvent progressive advancement goals. In addition, the existing language leaves open to interpretation by inmate workers that the option of advancement beyond the next progressive skill or pay level is available, resulting in inmate appeals. Therefore, the regulations are being amended to eliminate mis-interpretation and inmate appeals.

### **Specific Benefits:**

- Will eliminate inconsistencies from institution to institution and facility to facility.

- Decrease the incidences of inmate appeals regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.
- Support uniformity in application of regulations regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.
- Provide assurances of consistent and equitably allocated inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.

**SPECIFIC PURPOSE AND RATIONALE FOR THE PROPOSED REGULATORY ACTION:**

**Proposed Regulatory Amendment:**

Section 8006 is amended to read:

**8006. Inmate Pay Rates, Schedule and Movement**

- Inmates assigned to work programs within CALPIA shall receive compensation as determined by the General Manager and reviewed by the Prison Industry Board (PIB). Compensation shall be paid from the Prison Industries Revolving Fund, and shall be in accord with the graduated pay schedule, and based on quality and quantity of work performed, and technical skills and abilities required for its performance.
- Any proposed changes to the Inmate Pay Schedule shall be submitted by the General Manager to the PIB for review.
- Final determination of any disputes or interpretations of the Inmate Pay Schedule shall be made by the General Manager.
- CALPIA inmate pay rates shall be in accord with the following skill and step levels:

Skill Level	Step I	Step II	Step III
Level 1	\$.80	\$.90	\$1.00
Leadperson (AA)			
Level 2	.70	.75	.80
Special Skills (A)			
Level 3	.60	.65	.70
Technician (B)			
Level 4	.50	.55	.60
Semi-Skill (C)			
Level 5	.35	.40	.45
Laborer/Entry Trainee (D)			
- The Prison Industries Administrator/Lead Manager at each facility shall be responsible for the administration of the CALPIA inmate pay program, ensuring pay positions are properly classified and allocated.
- Movement between one pay rate to another pay rate shall be based upon the following:

- (1) Pay increases. Increases shall not be automatic or solely based on the inmate's longevity in an assignment. Increases in the pay rate shall be based on the inmate's productivity (quantity and quality of work performed), the supervisor's work/training performance report, and shall be subject to the review and approval of the Prison Industries Administrator/Lead Manager or manager in charge of inmate activities or other designee of the General Manager.
  - (A) ~~Inmates may become eligible to receive a pay increase from one step level to the next advancing step level as described in subsection (d)(1) for satisfactory performance and demonstrated proficiency after they complete three months of work in each step level, as described in subsection (d)(1). Inmates shall not advance to the next Skill Level described in subsection (d)(1) until and after the inmate has completed three months in each step of the current Skill Level.~~
  - (B) Inmate pay increases from Step I to Step II and finally Step III shall be effective upon the Prison Industries Administrator/Lead Manager or manager in charge of inmate activities review and approval on the first day of the following month after the pay increase is administratively processed.
- (2) Pay decreases. Reduction in pay shall be based on the immediate supervisor's recommendation, inmate's less than satisfactory work performance, or inmate misconduct as described in Title 15, California Code of Regulations 9CCR), Division 3, Sections 3312, 3314, or 3315.
  - (A) Inmate pay decreases shall be effective upon the Prison Industries Administrator/Lead Manager or manager in charge of inmate activities review and approval on the first day of the following month after the pay decrease is administratively processed.
- (3) Advancement. ~~Inmates may become eligible to advance to a higher skill level after completion of three months in step 3 of the current Skill Level, as described in subsection (d)(1), with the immediate supervisor's recommendation and based upon the inmate's demonstration of proficiency and increased skill level, their work/training performance report, and shall be subject to the review and approval of the Prison Industries Manager/Lead Manager or manager in charge of inmate activities or other designee of the General Manager. Advancement from one skill level to the next higher skill level shall be into step 1 of the next skill level. Skill level advancement shall be from one level to the next higher level, one level at a time, in progression of levels and steps.~~
  - (A) ~~Inmates may advance from one skill level to the next after they complete one month of work in their current skill level as described in subsection (d)(1).~~ When staffing issues and/or operational needs dictate, a deviation from the procedure set forth in section (f)(3) can occur based upon a case-by-case evaluation of the inmate's performance, skill and experience, with appropriate documented justification and on a case-by-case basis, approved by the Branch Manager or Assistant General Manager of Operations, by which the inmate may be advanced to a higher skill level.

- (B) Inmate advancement shall be effective upon the Prison Administrator/Lead Manager approval on the first day of the following month after the pay increase is administratively processed.
  - (C) An inmate's longevity shall not be used as criteria for the purpose of upgrading skill level.
- (4) Removal beyond inmate control. Inmates removed from their work assignment for reasons beyond their control, including, but not limited to out-to-court or lengthy hospital stay, may return to a CALPIA assignment at the same or closest level of pay to their former position, if a position is available, via the institution classification committee process, CCR, Title 15, Division 3, Section 3040.

### **Purpose, Necessity and Rationale:**

CALPIA and PIB propose amending Section 8006 to address issues regarding inmate pay rates, schedule and movement. The broad purpose of this proposed regulation action is to:

- Eliminate inconsistencies from institution to institution and facility to facility.
- Decrease the incidences of inmate appeals regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.
- Support uniformity in application of regulations regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.
- Provide assurances of consistent and equitably allocated inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.

The regulation package has a number of benefits which are tied to CALPIA's overall mission. CALPIA is committed to reducing post-release recidivism, and doing so cost-effectively, by providing training, experience, and skills through CALPIA work assignments. Misunderstanding has arisen in operations regarding the necessity and operational standard of advancing inmate workers from one skill level to the next progressive skill level and from one pay level to the next progressive skill level, and as a result, it became necessary to enumerate that exact requirement, along with enumerating any exceptions required by operational need or specific circumstances. These regulations ensure that inmates are provided with equitable and standardized advancement in pay rates and skill levels, schedules and movement for work assignments. These proposed regulations safeguard CALPIA's operations and mission by making some minor changes in order to align the CALPIA inmate worker program regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.

Section 8006 ensures that both inmates and CALPIA staff have an understanding of the progressive requirement for increases in pay rates and skill levels, with an exception provided for operational needs. Section 8006 alleviates some confusion among inmates and staff and eliminates ambiguity as to the availability of moving from one skill level to

another and one pay rate to another which may only be made to the very next level, except as necessitated by operational needs.

The proposed regulatory action will be vetted through the public process of PIB, as required in PC Section 2808, subsections (h) and (i), and promulgated through the regulatory process as specified in the Administrative Procedure Act (APA). PIB will review these regulations at the next board meeting. Upon approval, the PIB's Record of Vote and the applicable portion of the meeting minutes will be included in the rulemaking file. These documents will be filed with the Office of Administrative Law (OAL).

**Consideration of Alternatives:**

CALPIA has determined that there are no reasonable alternatives to the proposed regulatory action nor have any reasonable alternatives been brought to the attention of CALPIA that would lessen any adverse impact on small business.

**ECONOMIC IMPACT ASSESSMENT**

As a result of the economic impact assessment and in accordance with Government Code Section 11346.3(b), CALPIA has made the following assessments regarding the proposed regulation:

CALPIA is self-supporting from the sale of its products and services and operates from the Prison Industries Revolving Fund without any appropriation from the General Fund. Pursuant to Penal Code Section 2806<sup>1</sup>, CALPIA's revolving fund is not subject to annual appropriation by the Legislature or oversight by the Department of Finance. CALPIA has determined there is no economic impact from the proposed regulatory action,

**Creation or Elimination of Jobs within the State of California:**

CALPIA has determined the proposed regulatory action will have no impact on the creation or elimination of existing jobs or businesses within California as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

**Creation of New Businesses or Elimination of Existing Businesses within the State of California:**

CALPIA has determined that the proposed regulatory action will have no impact on the creation of new or elimination of existing businesses within the State of California as the

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<sup>1</sup> Penal Code § 2806 (Deering's 2017).

<sup>2</sup>Funds deposited in the revolving fund are not subject to annual appropriation by the Legislature and may be used without a time limit by the authority.

The Prison Industries Revolving Fund is not subject to the provisions of Articles 2 (commencing with Section 13320) and 3 (commencing with Section 13335) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code . . .'

proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

**Significant Statewide Adverse Economic Impact on Business:**

CALPIA has initially determined that the proposed regulatory action will not have any statewide adverse economic impact directly affecting businesses as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

**Expansion of Businesses Currently Doing Business within the State of California:**

CALPIA evaluated whether businesses would be affected in the State of California. CALPIA has made the initial determination this proposed regulatory action will not affect the creation of new business, the expansion of existing businesses, or the elimination of existing businesses as the proposed regulation only affects the internal management of CALPIA and the employment of inmate workers within CDCR facilities and CALPIA operations.

**Local Mandates:**

CALPIA has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 as the proposed regulation only affects the internal management of CALPIA.

**Benefits of the Regulations**

CALPIA has evaluated the potential benefits of this proposed regulatory action and made an initial determination that this proposed regulatory action:

- Will have no effect on housing costs.
- Will not impose new mandates upon local agencies or school districts.
- Will involve no nondiscretionary costs or savings to any local agency, no cost to any local agency or school district for which Sections 17500-17630 of the Government Code require reimbursement, nor costs or savings in federal funding to the state.
- Will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California.
- Will continue to provide a nonmonetary benefit for the protection and safety of public health and safety, by ensuring ongoing efficiency of operations employment inmate workers, and providing work experiences for inmate workers to utilize upon release from custody.
- Will eliminate inconsistencies from institution to institution and facility to facility.

- Decrease the incidences of inmate appeals regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.
- Support uniformity in application of regulations regarding inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.
- Provide assurances of consistent and equitably allocated inmate pay rates, schedule and movement and promotions to increased skill level and pay rates.

**Reports Relied Upon:**

None.